



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MND, MNR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The tenant's application is a request for a monetary order for \$1566.96 and recovery of their \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$2700.00 and recovery of their \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Are the tenants entitled to a monetary order \$1566.96?

Are the landlords entitled to a monetary order of \$2700.00?

Background and Evidence

The tenants testified that:

- They saw this house advertised on Craigslist and went to view it on April 1, 2013.
- When they viewed the rental unit the landlord told them that both kitchens in the unit would be available for them to use.
- They inform the landlords that there would be two families moving in and that's why they needed two kitchens.
- There were other prospective tenants offering to rent the unit at \$1700.00 and therefore they offered \$1800.00 to rent the unit and the landlord's accepted.
- On April 6, 2013 they signed a tenancy agreement with the landlord and paid \$1800.00 cash, \$900.00 for the security deposit, and the other \$900.00 for one half months rent as the tenancy was starting on April 15, 2013.
- The landlord allowed one of the tenants to move in on April 13, 2013, and then the second tenant moved in on April 21, 2013.
- After moving in they had a visit from the Bylaw Enforcement Officer for the City of Abbotsford and the Bylaw Enforcement Officer inform them that the landlord had been ordered to remove the downstairs stove.
- They contacted the landlord to discuss this problem and the landlord suggested they just use a hot plate and convection oven to get around the bylaw.
- They were not comfortable with this and decided since the landlord had breached the tenancy agreement they would move out of the rental unit and informed the landlord they would do so.
- The landlord told them if they wanted their rent and security deposit back they would have to be out by May 4th 2013 and therefore they were very rushed to move out and the two families ended up having to move to two separate places.
- On the day they moved out they did a walk-through with the landlord and the landlord told them that everything looks fine and the landlord returned their security deposit and the one half months rent that they had paid for a total of \$1800.00.
- They have however had excessive costs resulting from having to move twice in a short period of time and they believe the landlord should pay those costs as follows:

Fortis BC Utilities	\$66.96
Hydro utility	\$49.69
Moving truck	\$82.73
Storage for J.M.	\$727.58
Move in and move out costs for C.B.	\$640.00
Total	\$1566.96

The landlord testified that:

- When the tenants rented the house they were informed that they were not allowed to use the downstairs stove and that it was going to be removed.
- They had already had a visit from the bylaw enforcement officer who had informed them of the requirement to remove the stove and therefore they would not have rented the unit to two families.
- The tenants told them they were all one family and would be renting the unit as one family and did not need the second stove.
- After the tenants moved in they started using the downstairs as a separate suite and started using the kitchen in the downstairs suite even though they knew they were not supposed to.
- Further the tenants at no time paid any security deposit or any rent to the landlords and that is why no receipt was ever issued.
- They made numerous phone calls to the tenants to pay the rent but none was ever forthcoming and eventually the tenants vacated without paying anything and without giving the required notice.
- The tenants claim that we returned \$1800.00 to them; however why would we return money and then turn around and file a claim for that money again. The tenants never paid any rent and therefore there was no money to return to them.
- The tenants lived in the rental unit for three weeks without paying any rent whatsoever and therefore they are asking for the loss rental revenue of \$1800.00.
- The tenants also scratched the hardwood flooring in the rental unit, left a hole in the wall and damaged blinds which they have repaired themselves, however the estimate to repair was \$900.00 and therefore they believe that the tenant should also pay \$900.00 for that damage.

In response to the landlord's testimony the tenants testified that:

- The picture of the hardwood floor supplied by the landlord is not even the flooring that was in the rental unit. They returned at later date and have supplied pictures of the flooring that was in the unit.
- The landlord did not tell them before they moved in that the stove in the downstairs unit could not be used; it was not even mentioned until after the Bylaw Officer informed them that it was an illegal suite.
- The landlord was fully aware that we were moving out of the rental unit and knew that it was because we were unable to use the downstairs kitchen.

Analysis

It's my finding that neither the landlords nor the tenants have met the burden of proving their claims against the other.

The whole issue boils down to whether or not the tenants were informed that the stove in the lower portion of the rental unit was not to be used, and whether or not the tenants inform the landlords that they were going to be using the rental unit as two separate suites.

The burden of proving a claim lies with the person making that claim, and when it is just one person's word against that of the others that burden of proof is not met.

The tenants claim that they informed the landlord that there were two families moving into the rental unit and that they would be using both kitchens, however there is nothing in the tenancy agreement to indicate that two families are moving into the rental unit and therefore it is basically just their word against the landlords and that's not sufficient to meet the burden of proving their claim.

The landlord claims that the tenants were informed that the stove in the rental unit was not to be used and was going to be removed, however again there is nothing in the tenancy agreement stating that the stove was to be removed and therefore, again, it is just the landlords word against that of the tenants and that is not sufficient to meet the burden of proving the landlords claim.

Both the tenant's version of events and the landlord's version of events are equally plausible, however neither is more plausible than the others.

Is my decision therefore that I will not allow either the landlord or the tenants claims.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

The landlord's application is dismissed in full without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 27, 2013

Residential Tenancy Branch

